

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRETT T. CULVER,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1:01-CV-0904
	:	(Judge Kane)
COMMONWEALTH OF	:	
PENNSYLVANIA, <u>et al.</u>,	:	
	:	(Electronically Filed)
Defendants	:	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
THIRD MOTION TO COMPEL DISCOVERY**

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 alleging claims under the First, Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff, Brett Culver, is a prisoner currently incarcerated at SCI-Mahanoy. Defendants are several current or former SCI-Mahanoy and Department of Corrections ("DOC") employees.

In his complaint, Culver alleges that his legal documents were illegally confiscated and as a result he was denied access to the Court. He further claims that the defendants issued him false misconduct reports and subjected to retaliation and unjust punishment.

On March 3, 2002, plaintiff served the defendants with several of sets of interrogatories. Defendants responded to interrogatories directed to Mooney, Shannon and Miknich and provided copies of documents relevant to the requests

on April 3, 2002.

On April 23, 2002, plaintiff filed a Motion to order defendants to comply with interrogatories requests. While Culver did not file a supporting brief, defendants nonetheless, responded to Culver's motion to compel on May 6, 2002. On May 10, 2002, this Court denied Culver's motion for failure to file a brief in support of his motion as required by L.R. 7.5. Defendants filed a motion for summary judgment on May 9, 2003, and a supporting brief on May 22, 2003.

On September 8, 2003, defendants received Culver's second motion to compel discovery and supporting brief. Defendants responded to Culver's motion to compel on September 29, 2003. Culver filed yet another motion to compel discovery on October 22, 2003. Culver's latest motion to compel discovery, is nothing more than a rehash of the motion he filed on September 8, 2003. In addition, Culver notes that he never received an order from the Court closing the discovery period and that is unable to understand the response submitted by defendants' counsel to his previous motion to compel.

Here, as in his previous motions to compel, Culver seeks to compel answers to interrogatories and document production requests that he submitted to the defendants on March, 2002. As previously noted, defendants responded the interrogatories and produced relevant documents to the plaintiff on April 3, 2002. (See Exhibits "A-C" attached to defendants brief in opposition to Culver's second

motion to compel filed on September 29, 2003.)

Now, months after the Court's order, Culver once again seeks to reopen discovery and compel answers to interrogatories and produce documents that he believes defendants continue to withhold. Culver did not file any motions with the Court seeking an extension of the discovery period and incorrectly states that "the Court has not closed discovery in this case." Pursuant to L.R. 26.4, discovery in this case has been closed for months and dispositive motions are currently pending before the Court.

In the interest of brevity, defendants counsel will not reiterate the arguments presented in their brief in opposition to Culver's motion to compel discovery filed on September 29, 2003' rather, defendants incorporate those arguments herein.. Therefore, the Court should deny Culver's motion to compel discovery as untimely and without merit.

CONCLUSION

For these reasons, the plaintiff's motion to compel discovery should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: s/ Maryanne M. Lewis
MARYANNE M. LEWIS
Deputy Attorney General
Attorney ID# 82813
SUSAN J. FORNEY
Chief Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg PA 17120
(717) 787-9719
(717) 772-4526 FAX
mlewis@attorneygeneral.gov
DATE: November 7, 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRETT T. CULVER,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1:01-CV-0904
	:	(Judge Kane)
COMMONWEALTH OF	:	(Electronically Filed)
PENNSYLVANIA, <u>et al.</u>,	:	

CERTIFICATE OF SERVICE

I, Maryanne M. Lewis, Deputy Attorney General, hereby certify that on this date I caused to be served the foregoing **Defendants' Response to Plaintiff's Motion to Compel Discovery**, by depositing a copy of the same in the United States mail, postage prepaid, in Harrisburg, PA., addressed to the following:

**Brett T. Culver, #DD 3483
SCI-Mahanoy
301 Morea Rd.
Frackville, PA 17932**

s/Maryanne M. Lewis
MARYANNE M. LEWIS
DEPUTY ATTORNEY GENERAL

DATE: November 7, 2003